

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

STEPHANIE COLE)	
Claimant)	
VS.)	
)	Docket No. 213,811
KELLY'S TEMPORARY SERVICE)	
Respondent)	
AND)	
)	
CONTINENTAL CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from the Award of Administrative Law Judge Julie A. N. Sample dated March 4, 1998. Oral Argument was heard October 23, 1998.

APPEARANCES

Claimant appeared by her attorney, John G. O'Connor of Kansas City, Kansas. Respondent and its insurance carrier appeared by their attorney, Eric T. Lanham of Kansas City, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What is the nature and extent of claimant's injury? This issue is further limited to whether claimant suffered a functional impairment of 23 percent to the body as a whole pursuant to the opinion of Dr. P. Brent Koprivica, or 6 percent to the body as a whole pursuant to the opinion of Dr. J. Michael Quinn.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of facts and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail, and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate, and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein. In considering the evidence in the record, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed.

The only dispute in this matter deals with the opinion of Dr. Quinn versus the opinion of Dr. Koprivica as to what functional impairment resulted from claimant's June 5, 1996, accidental injury with respondent. Both parties argued the opposition's medical expert made mistakes in evaluating claimant's functional impairment under the AMA Guides to the Evaluation of Permanent Impairment. In reviewing the opinions of both doctors, the Administrative Law Judge found neither doctor to have provided a perfect opinion regarding how claimant's injuries affected her physically and how the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, would rate claimant's functional impairment from these injuries. The Administrative Law Judge accurately assessed the medical evidence in this file in finding that the truth, in fact, lies somewhere in between the opinion of Dr. Quinn and the opinion of Dr. Koprivica.

It is the function of the trier of facts to decide which testimony is more accurate and credible, and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. The trier of facts is not bound by the medical evidence presented in the case, and has a responsibility of making its own determination. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

In this instance, the Administrative Law Judge's award of a 14.5 percent functional impairment to the body as a whole is appropriate when considering the entire record, and the Appeals Board adopts this award as its own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Julie A. N. Sample dated March 4, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John G. O'Connor, Kansas City, KS
Eric T. Lanham, Kansas City, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director